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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/424,431	03/16/2000	JOHN W WONG	287300022USA	7974

7590 09/08/2003  
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EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/08/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/424,431

Applicant(s)

WONG, JOHN W

Examiner

Michael G. Mendoza

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 8 July 2003 have been fully considered but they are not persuasive. The applicant argues that the combined references do not teach an abort switch adapted to both halt an apparatus for delivering radiation therapy and open a closed one of a first and second valves, and that Anderson is unrelated to Rienmueller/Nord. Anderson teaches a kill switch to allow termination of radiation therapy. Rienmueller et al. teaches interruption of therapy if shortness of breath occurs. Rienmueller et al. teaches a normally open valve that is closed during radiation therapy. Therapy is only delivered when the valve is closed. If therapy is aborted the closed valve would return to the normally open position. Therefore, the kill switch of Anderson; which stops therapy if correct parameters are not optimum or if shortness of breath occurs as taught by Rienmueller, would indirectly/inherently open the valves taught by Rienmueller/Nord. Furthermore, the Anderson reference is related to Rienmueller/Nord in the art of radiation therapy.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rienmueller et al. 5067494 in view of Nord 5915381 in further view of Anderson et al. 6436127.

4. Rienmueller et al. teaches an apparatus for suspending ventilation in a patient and delivering radiation therapy to the patient during suspended ventilation, the apparatus comprising; an apparatus 8 for identifying a specific air flow direction and lung volume of the patient (col. 2, lines 3-4); an apparatus 14 for suspending patient ventilation at the specific air flow direction and lung volume (col. 2, lines 12-19); and an apparatus 1 for administering radiation therapy during suspension of patient ventilation (col. 1, lines 63-65). It should be noted that Rienmueller et al. fails to teach the ventilator assembly having a first selectively operable valve for inhalation control and a second selectively operable valve for exhalation control.

Nord teaches an apparatus with a common first selectively operable valve for inhalation control and a second selectively operable valve for exhalation control for controlling inhalation of a breathing gas and exhalation of expired gases. Therefore it would have been obvious to one of ordinary skill in the art to modify the apparatus of Rienmueller et al. to include the valves of Nord for allowing a breathing gas to be carried to the patient (col. 2, lines 49-65) for ventilation of patients with diseased or damaged lungs (col. 1, lines 25-26).

It should also be noted that Rienmueller/Nord fails to specifically teach an abort switch adapted to halt the apparatus and open closed one of the first and second selectively operable valves.

Anderson et al. teaches an apparatus for delivering radiation therapy with a common abort switch (col. 12, lines 3-5). Therefore, it would have been obvious to one of ordinary skill in the art to modify the apparatus of Rienmueller/Nord to include the abort switch of Anderson et al. to allow termination of radiation therapy if the correct parameters are not optimum (col. 13, lines 58-63). Furthermore, Rienmueller/Nord is fully capable of performing the same function (col. 4, lines 1-5).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

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MM  
August 28, 2003

  
GLENN K. DAWSON  
PRIMARY EXAMINER